

PLANNING AND DEVELOPMENT BOARD MINUTES

November 3, 2008 City Hall, Planning and Development Department Rm 209, 7:30 p.m.
1000 Commonwealth Avenue, Newton, Massachusetts 02459

Full Members Present:

Joyce Moss, Acting Chair
Tabetha McCartney
David Banash
Carol Beard
Scott Wolf

Alternate Members Present:

Leslie Burg
Keith Craig

Staff Present:

John Daghljan, Associate City Engineer
Kathleen Cahill, Community Development Senior Planner
Candance Havens, Chief Planner
Ben Solomon-Schwartz, Senior Planner

Public Present:

Bud Shadrawy, Attorney for Kessler Woods
Tom Southworth, Cornerstone Development Corporation
Tom Schultz, The Architectural Team, Inc.

J. Moss, Acting Chair, called the meeting to order at 7:37 p.m.

Board of Survey

1. **Public Hearing and Action Item:** Cornerstone Development Corp. (Mr. Tom Southworth) requesting a one year extension for the final completion of the construction of Kessler Way. Three homes on Kesseler Way have not yet been built.

See Board of Survey Minutes.

Planning Board

2. **Public Hearing and Action Item:** Petition for a change of zone from SINGLE RESIDENCE 3 to MULTI RESIDENCE 3 for a parcel of land located on LaGrange Street, Ward 8, identified as Section 82, Block 37. Lot 95, and shown as Lot H-1 on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102

Tom Southworth, Cornerstone Development Corporation, spoke on behalf of the developer, seeking the zone change for the LaGrange Street parcel. In 2006 the Board approved a zone change contingent on the developers obtaining a special permit within two years; this timeline expires in November 2008. Therefore, the group is forced to begin the

special permit process again and must also obtain approval for the zone change again. The zone change was previously approved by the Land Use Committee on October 14, 2008.

The development contains sixty-two condominium units. The units are divided in the following way: one large building contains 52 units, and two smaller buildings hold 6 and 4 units. There have been no substantial changes to the plan from when it was first approved two years ago. Mr. Southworth also reiterated that many components of the development (i.e. drainage, roadway) were reviewed by outside consultants. Since the initial permit was approved, the developers made two slight changes that were also approved in 2006, including lowering the wing of the large building by one story and changing the distribution of affordable and market rate units. In response to questions at the October 2008 public hearing, the developer revisited the traffic analysis confirming the original conclusions were valid. No additional traffic mitigation measures were deemed necessary. Mr. Southworth added that the project was thoroughly reviewed by both the engineering and planning departments.

Since the Planning Board was not in attendance at the Land Use Committee J. Moss inquired if there were any residents present at that hearing. Mr. Southworth responded that two long-time residents, who were also abutters attended the hearing and voiced concerns about the traffic. Letters were sent to abutters prior to the public hearing. Cornerstone Development Corporation has an agreement with all abutters for fencing, landscaping, and blasting procedures. Despite agreements and discussions, there remains one abutter who is unhappy about the development. This particular individual is dissatisfied with the location of the development on the forty-two acre parcel. Mr. Southworth pointed out that no house is closer than one hundred feet to any of the proposed buildings.

C. Beard inquired what would happen if the development produced more traffic than was anticipated. She wondered if the developer would be required to address this situation. Mr. Southworth indicated that the traffic studies completed on the development have shown 'light' traffic (1-2% at its peak) presenting no need for a traffic light. The overall site design, including the entrance to the site meets local and state standards. As a result of the anticipated low levels of traffic, there was no discussion in the special permit about addressing higher than predicted levels of traffic.

S. Wolf asked if there was guest parking and if so if there was a formula used to determine the amount of guest parking. Mr. Southworth responded that twenty-one guest spaces will be available and that the Planning Department approved this quantity. Mr. Southworth also indicated that the resident parking was located beneath the main building in order to contain the footprint of the building and minimize site disturbance. J. Moss wondered why the width of the parking spaces was reduced, a fact noted in the technical memorandum. Mr. Shadrawy stated that the smallest space was 8 feet by 6 inches; size limitations were placed on the spaces because of support columns in the underground parking garage.

L. Burg stated that this proposal is thoroughly vetted, and the developers have worked extensively with City departments and residents. J. Moss asked if Cornerstone anticipated beginning in the next year. Mr. Southworth responded that he was unsure if that would happen.

D. Banash inquired about the Planning Department's recommendation with regard to the petition. Candance Havens, Chief Planner, stated that the Planning Department generally does not make recommendations for the Land Use Committee which has been the practice since she joined the department one year ago. She stated that the Planning Department would support the proposal as previously approved; making only a few recommendations for changes. These recommended changes are related to the special permit/site plan approval process and include the following: the project must show a commitment to sustainability, and the application must include the submission of digital plans, and that additional documentation must be submitted to DHCD regarding the affordable units. D. Banash requested that the Board request the Planning Department amend their memorandum policy to include recommendations concerning zoning changes. C. Havens replied that the Land Use Committee does not receive recommendations from the Planning Department, but that she is unsure of the practice with regard to the Zoning and Planning Committee. She will forward the request.

D. Banash made a motion that when the Board issue a recommendation that the Planning Department include a departmental recommendation as part of their technical memorandum addressing zoning changes. S. Wolf seconded the motion, and the Board voted 5-0-0 to issue the recommendation.

D. Banash also inquired if there were questions from Aldermen at the public hearing on October 14th. Mr. Shadrawy responded by saying that there were several comments at the public hearing from Aldermen, one of which concerned traffic mitigation and another traffic signaling. Cornerstone Inc. addressed these comments by revisiting the original traffic study, which confirmed the low levels of traffic that were likely to be generated and confirmed that no additional mitigation is necessary. L. Burg made a motion to approve the petition for a change of zone from SINGLE RESIDENCE 3 to MULTI RESIDENCE 3 for a parcel of land located on LaGrange Street, Ward 8, identified as Section 82, Block 37. Lot 95, and shown as Lot H-1 on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102. D. Banash seconded the motion and the Board approved the petition 5-0-0.

Community Development Board

- 3. Action Item:** Approve the minutes of the October 6, 2008, meeting of the Planning and Development Board acting as the Community Development Board.

On request of J. Moss for a motion to approve the minutes, T. McCartney so moved. S. Wolf, seconded the motion. The Board voted 5-0-0 to approve the minutes.

- 4. Action Item:** Election of Chair and Vice-Chair of the Planning and Development Board.

D. Banash made a motion to elect Tabettha McCartney as Chair of the Planning and Development Board, S. Wolf seconded the motion and the Board voted 5-0-0 to elect Tabettha McCartney as Chair. T. McCartney made a motion to elect Joyce Moss as Vice-

Chair, C. Beard seconded the motion, and the Board voted 5-0-0 to elect Joyce Moss as Vice-Chair of the Planning and Development Board.

5. Discussion Item: Home Business Ordinance.

D. Banash updated the Board on Home Business Ordinance Sub-Committee's work to respond to issues that were brought up at the Zoning and Planning Committee public hearing for the Home Business Ordinance as well as recommendations by the Planning Department. The primary issues that the Home Business Ordinance Sub-Committee has been working on include researching real property taxation (a question raised by Lyle Baker) as well as resolving Alderman Swiston concern about how the proposed ordinance will effect resident's hosting tupperware and Mary Kay parties. D. Banash circulated a proposed letter addressing the following changes in the ordinance: the use of the term 'non-resident', real property taxation, and changes with regard to the tupperware/Mary Kay issue.

D. Banash has had a series of conversations with Newton's Chief Residential Assessor regarding property taxation. He has concluded that it is probable there will be no change in the real property taxation. However, there are unknown factors that could change this form of taxation, such as the registration policy associated with the Home Business Ordinance. The Ordinance may increase information to the Assessor's Office, thereby causing this office to investigate a greater number of home businesses.

Following conversations with Alderman Swiston, D. Banash determined that tupperware and similar parties do not qualify as home businesses. This is due to the fact that hosts are receiving a discount instead of monetary compensation and the merchandise is not being shipped or stored at their house. In the proposed Home Business Ordinance the business must belong to the resident, and in the case of hosting tupperware and similar parties the business does not belong to the host/resident. The Board discussed how and if the recommendation from the Home Business Ordinance Sub-Committee should address small businesses requiring the storage of goods on site. There was hesitation by several members of the Board to amend the provision at this time for fear that it would prevent the ordinance as a whole from being passed.

S. Wolf inquired if there was a way for the ordinance to allow for individuals who store goods at their house that they do not make to continue to conduct a home business. D. Banash indicated that Phil Herr had moved the clause addressing this category of businesses to the special permit section of the ordinance. S. Wolf stated that he would move the Board recommend this change. J. Moss asked if there was a feeling that this change would make the ordinance more difficult to pass. L. Burg stated that she believed the change would make the ordinance more difficult to pass, particularly given the fact that it involves a special permit which is not an easy process in Newton, and therefore the change should be avoided if possible. S. Wolf reminded the Board that special permits are less arduous than site plan approvals, particularly given the fact that under the Home Business Ordinance the Planning and Development Board would review these types of special permits. L. Burg does not believe that this portion of the ordinance will pass un-amended; rather special permit granting authority will remain in the Board of Aldermen. Board members voiced skepticism that these types of small businesses would be brought to light due to the fact that most will not be registered.

D. Banash stated that he will attend the working session on November 10th and if the same issues and questions come up during the session he would like the Board's support to recommend moving the paragraph concerning small businesses that store goods on site to the special permit section. L. Burg stated that she would support this recommendation if it was agreed that the Planning and Development Board would be the special permit granting authority.

J. Moss stated that when the examination of home business was first broached it was her understanding that the issue was also a question of city revenue, in the sense that the portion of the home that was being used for business could be assessed as a commercial property. However, it is now her understanding that the businesses would be taxed on a residential basis. D. Banash stated that in Newton assessing tax on a home business is similar to a personal property tax assessment. The Assessors Department evaluates the percentage of the property that is used for business as well as the amount of time this part of the property is in commercial use in order to determine the rate of tax. In Newton about fifty-percent of home businesses occupy less than ten-percent of the property for commercial use.

D. Banash stated that the effect that the Home Business Ordinance may have on Newton's commercial district is unknown. An analysis of this is beyond the scope of the Home Business Sub-Committee. Many Board members agreed that there were measures in the Ordinance that mitigated against large businesses located in a commercial district relocating to a residential area as a home business.

D. Banash stated that the Home Business Ordinance raised the awareness that business could be conducted in a residential area without negatively affecting the neighborhood, thereby legitimizing the current technology in the context of home business. L. Burg added that the ordinance also facilitated the examination of alternative special permit granting authorities, such as the Planning and Development Board. D. Banash made a motion to amend the section of the ordinance which addresses the storage and sale of merchandise by moving it to the special permit section, but only if requested by the ZAP Committee at the working session on November 10th. S. Wolf seconded the motion. The Board voted on the recommendation 5-0-0.

6. Discussion Item: Housing Action Plan Initiative [HAPI], update from the October 30th Fall Workshop/Kickoff event.

L. Burg and J. Moss both attended the event and relayed the success of the workshop, particularly in the terms of the turnout. Speakers included Phil Herr, Joyce Moss, Trisha Gudit, Ann Houston of CHAPA, Kevin McCormick of CAN-DO, and Mayor Cohen. Sign up sheets for volunteers to participate in the HAPI were circulated. The goal is to have some of these initiatives completed by 2009, and there is another workshop scheduled for mid-December. The HAPI will also examine regulatory barriers to affordable housing in the City and ways to address these obstacles. Joyce Moss indicated that during the event she reported on the Community Preservation Act, specifically, the way resources were allocated to the production of housing as well as the possibilities for streamlining the application process. She also spoke on behalf of the Planning Board about the potential ways that the

Board can positively influence the City's affordable housing including the various state and federal entitlement programs and local zoning.

The meeting adjourned at 9:15pm.

Respectfully submitted,

Stephen D. Gartrell
Secretary